*** THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

+ WRIT PETITION NOs. 11006, 11381 & 11575 *OF* 2006.

% WEDNESDAY, 21ST DAY OF JUNE, TWO THOUSAND SIX

Lakshmi Ganesh Films
rep. by its Proprietor
B.Subrahmanyam s/o Bhaskar Rao,
Aged about 40 years, R/o Film Nagar
Hyderabad and Others

… Petitioners

versus

$ The Government of A.P., rep. by its Special Chief Secretary,
to Government, Home Department, Secretariat,
Hyderabad and others

… Respondents

! Counsel for the petitioners : Mr. V.R. Reddy, Senior Counsel

assisted by Mr. C.R.Sridharan
Mr. M.S. Prasad, and Mr.Dama
Seshadri Naidu, Advocates

^ Counsel for the respondents : Government Pleader for Home

< Gist :

>Head Note:

? 1. Identity and Violence – The Illusion of Destiny – Amartya Sen
2. AIR 1958 SC 578
3. 3 L.Ed. 2d 1512
4. 250 US 616 (1919)
5. 249 US 47, 52 (1919)
6. 274 US 357 (1927)
7. H.M. Seervai – Constitutional Law of India, 4th Edn. At 703
8. 93 L.Ed. 1131 (1150 and 1151) = (1948) 337 US 1 at 36
9. AIR 1951 SC 118
10. AIR 1952 SC 196
11. 2005(8) SCC 534
12. (2001)2 SCC 386
13. AIR 1973 SC 112; AIR 1967 SC 106
14. 403 US 15 (1971)
15. 394 US 576 (1969)
16. 340 US 315 (1951)
17. 427 US 50 (1976)
18. 106 S.Ct. 925 (1986)
19. 440 US 1 (1979)
20. 562 F.2d. 749 (1977) d.c.
21. 413 US 376 (1973)
22. 403 US 15 (1971)
23. 397 US 728 (1970)
24. 402 US 415 (1971)
25. 25 US 105
26. 352 US 380 (1957)
27. AIR 1950 SC 124
28. (1980) 1 SCC 43
29. (1989) 2 SCC 574
30. (2001) 1 SCC 582
31. 1995 (2) ALD 81

W.P.NOS.11006, 11575 & 11381 OF 2006

ORDER:

The anti-Semitic Nazi genocide at Dachau, Bergen-

Belsen and Auschwitz, the partition carnage, the Somnath pillage, the Godhra massacre, inquisitions, crusades, purges, ethnic cleansing, untouchability and slavery are but some of the shameful but recurring episodes in human history. Illustrations of man's inhumanity to others; of intolerance of the pervasive diversity of the human condition; dehumanizing examples of mankind's irrational and emotionally sterile response to aspects of others that are disagreeable; precedents of brutalizing dissent of colour, faith, dogma, race, ethnic origins, religious persuasions, descent, cultural practices or other insular indices of the human condition.

We enjoy a shared membership of the human race and our future depends on tolerance of distinctions that mark the richness and diversity of the plural global community of man. Faith, race, religion, dogma or culture are not wholly homogeneous attributes. There are several clear subtle and evolving variations within the same general milieu.

In his preface to his book[1] Prof. Sen points out:

> *"Indeed, many of the conflicts and barbarities in the world are sustained through the illusion of a unique and choiceless identity. The art of constructing hatred takes the form of invoking the magical power of some allegedly predominant identity that drowns other affiliations, and in a conveniently bellicose form can also overpower any human sympathy or natural kindness that we may normally have. The result can be homespun elemental violence, or globally artful violence and terrorism."*

Prof. Sen offers a prefatory solution to the tumult, turmoil, and barbarity that has beset human history, on false assumptions of the singularity of human identity:

> *" The prospects of peace in the contemporary world may well lie in the recognition of the plurality of our affiliations and in the use of reasoning as common inhabitants of a wide world, rather than making us into*

inmates rigidly incarcerated in little containers. What we need, above all, is a clear-headed understanding of the importance of the freedom that we can have in determining our priorities. And, related to that understanding, we need an appropriate recognition of the role and efficacy of reasoned public voice – within nations and across the world."

Freedom of speech and expression significantly contributes to a liberal open-minded civil society; rational, tolerant and accommodating plurality – what this freedom means and in the Indian constitutional context, is yet again in issue in this case.

Heard Mr. V.R.Reddy, learned Senior Advocate instructed by Mr.C.R.Sridharan; Mr. M.S.Prasad and Mr. D.Seshadri Naidu, Advocates for the petitioners and the learned Government Pleader for Home for the State Government.

The State Government by the impugned order (G.O.Rt.No.1012, Home (General.A) Department, dated.01-06-2006) in purported exercise of the powers conferred under Section.8 of A.P. Cinemas Regulation Act,1955 (A.P.Act No.4/1955) (for short "the 1955 Act") suspended the exhibition of a movie " The Da Vinci Code" in English, Telugu and other languages in the entire State, with effect from the publication of the notification. The reasons recorded for the above decision as set out in the impugned notification are:

" Government have received representations from various Minority Organizations, in general and Christian organizations, in particular, requesting the Government to impose ban on exhibition of the movie "The Da Vinci Code" to be released in the State of Andhra Pradesh on 2nd June, 2006. The ban should be from 2nd June 2006 onwards. They contended that the screening of the movie will not only offend religious sentiments but lead to demonstrations, disturb peace and tranquility in the State. The reports from the Government agencies

indicate that some Christian groups may take recourse to agitational activities if the film is released and that untoward incidents may take place.

Government after taking into consideration of the reports, complaints from Minority Community, particularly Christian Community regarding "The Da Vinci Code" have come into conclusion that exhibition of the film "The Da Vinci Code" is likely to cause breach of peace and hurt religious sentiments of Muslim and Christian Community, which may lead to demonstrations, disturb peace and tranquility in the State."

The writ petitions are filed challenging the above decision of the State Government.

In W.P.No.11006 of 2006, the two (2) petitioners are the authorized distributors for the film in the State of A.P and for the Nizam region respectively; in W.P.No.11381 of 2006 the petitioner is the distributor of films of Sony Picture Entertainment in India, authorized to distribute the film in the territory of India; and the petitioner in W.P.No.11575 of 2006 is a citizen who is a secretary in a private organization by occupation, interested in the study of literature. He read Dan Brown's novel and pleads that the book is a work of fiction, that having read the novel, coming to know that a motion picture was made out of it, he eagerly awaited an opportunity to appreciate and savor the visual conceptualization novel.

The brief facts relevant and material for the purposes of this case are:

(A) In 2003 an American author Dan Brown's novel *The Da Vinci Code* was published as a work of fiction woven around an alternate interpretation of certain aspects of Christian belief. The key events/fact assumptions of the contentious interpretation which substrate Dan Brown's novel are:

§ That the Holy Grail is not a physical substance, artifact or a chalice but a woman - Mary Magdelene who as the consort of Jesus carried the bloodline of the

Christ;

- § The Catholic Church has for over 2000 years suppressed the truth regarding Mary Magdelene and the Jesus bloodline, apprehensive of the power of the sacred feminine;
- § Mary Magdelene of the house of Benjamin was of Royal descent and was married to Jesus, a descendant of the Royal house of David. She was pregnant at the time of the crucifixion, later fled to Gaul where she was protected and sheltered in Marseille and thereat gave birth to a daughter by name *Sara*. The blood line of Jesus and Mary Magdalene was the Merovingian Dynasty;
- § Leonardo Da Vinci, a member of the Priory of Sion was aware of this secret of the Grail and revealed it in his famous painting - *The last supper*.

Drawing upon this core alternate interpretation, Dan Brown constructs his fictional work around a Harvard Symbologist Robert Langdon and an accomplished French cryptologist Sophie Neveu who set out to unravel the mystery of the Holy Grail. The novel became a world wide best seller and was translated into more than 40 languages.

(B) The film is an adaptation from the novel and was released in different parts of world including in countries populated predominantly by people professing the Christian faith, in Europe, in the U.S.A, in Argentine and Spain, in Italy, France, Poland, Sweden and in South-East Asia and parts of Africa and India as well.

(c) On 23-05-2006 the Central Board of Film Certification, Government of India (the Board), certified the film as fit for public exhibition, restricted to adult audience—"A" certificate. While the film was pending consideration for certification before the Board, representations were made by several Christian organizations to the Union Government to decline grant of certification and to ban the film. The Union Government organized a special screening for the objecting and other Christian organizations and the Minister for Information and Public Relations; Government of India also

saw the film. Thereat it was decided that the producers should add a disclaimer both before and after the film that it is a work of fiction. Accordingly a disclaimer: ***The characters and incidents portrayed and the names herein are fictitious and any similarity with the name, character or history of any person is entirely coincidental and unintentional***, was incorporated. Only after incorporation of the disclaimer the Board granted certification, on 23.5.2006. This averment by the petitioner (in W.P. 11006/06) is not refuted in the counter affidavit of the State.

(D) After certification, the film was slated for release for screening in different parts of India on 23-05-2006. In Andhra Pradesh it was scheduled for release on 02-06-2006. Just a day before, on 02-06-2006 the impugned notification was issued suspending the screening of the film.

(E) After the impugned notification the petitioner (W.P.No.11381 of 2006) represented by its letter-dated 05-06-2006 to the State requesting withdrawal of the ban on the exhibition of the film. There is however no response from the State Government.

(F)The film has been released in metropolitan centers like Mumbai, Kolkatta and Delhi as also in several other parts of the country including the State of Kerala where there is a substantial percentage of Christian population. According to the State Government's counter only in the States of Andhra Pradesh, Tamil Nadu, Punjab, Nagaland, Goa and Meghalaya the film has not been released as these States have suspended exhibition of the film.

The Special Chief Secretary to Government, Home Department, has filed a common counter affidavit on behalf of the State in W.P. Nos. 11006 and 11381 of 2006. To the extent relevant and material, the counter affidavit states that on 26.5.2006 a local distributor had advertised the release of the film on 2.6.2006. Thereafter several Christian organizations represented to the State Government objecting to the release and threatened agitations and protests if the film were released.

Representations were submitted on 26.5.06 and 27.5.06. The Government called for an intelligence report and after taking note of the threat of large-scale protests, threats of violence and in view of the law and order problem, which may occasion breach of peace in the State, the impugned notification was issued suspending the exhibition of the film u/Sec. 8 of the 1955 Act. The answering respondent asserts that the impugned notification was issued and the decision taken after the Government was convinced that the exhibition of the film would cause law and order problem and breach of peace. In para-5 of the counter the core of the justification for the impugned notification is set out:

> *The impugned order was passed by the Government keeping in view the representations made by various Christian Organizations and also the Intelligence Report. The ban was imposed to prevent any law and order situation that is likely to arise according to the Intelligence Report. Hence the impugned G.O. issued by the Government is legally valid and sustainable in the eye of law. The impugned order is neither violative of Article 14 nor Article 19(1)(a) of the Constitution of India.*

This court has called for and perused the Government record in relation to the impugned notification. From the perusal of the record it is seen that during 26th to 29th May, 2006 some representations were made by certain individuals including a Member of the State Legislative Assembly, Chairperson of the A.P. Women's Commission and organizations like the A.P. Christian Federation, Forum for equity and justice, the A.P. Council of Churches and the A.P. Bishops' council, to the Hon'ble Chief Minister of the State. The office of the answering respondent on 1.6.2006 received these representations. Earlier on 31.5.2006 an intelligence report was generated to the effect

that the release and screening of the film may lead demonstrations and disturb the peace and tranquility in the State. The intelligence report set out the circumstances, which justify this assessment. Among the circumstances recorded in that report, is a brief analysis of Dan Brown's novel followed by a conclusion that the film produced on the basis of the controversial story line in the novel depicts *Jesus in a poor light and that might hurt the religious sentiments of Christian community.* Another circumstance recorded was that Christian organizations and Muslim organizations like Majlis Bachao Tehreek, are opposing the screening of the film and demanding a ban.

The several petitioners attack the impugned notification on several grounds. To summarize, the relevant and principal grounds of attack are:

(A) The decision is without due application of mind, arbitrary, whimsical and irrational and constitutes an unreasonable restriction on the petitioner's rights guaranteed under Article. 19(1)(a). The decision also falls foul of the injunctions of Article.14 of the Constitution.

(B) The film having been certified for exhibition by an expert body, the Central Board of Film Certification, the State Government cannot overreach the said decision on the jejune ground that potential law and order situations might arise, based merely on representations of certain individuals and organizations. The State Government is obliged to ensure the maintenance of law and order and to preserve, protect and defend the fundamental right of speech and expression.

(C) The film has been exhibited in various parts India including in the State of Kerala which has the largest Christian population in India and there has been no breach of peace in that State nor has a ban or suspension of screening been imposed on the film threat.

(D) No authority of the State has seen the motion picture and formed an independent and informed opinion. Instead the State has illegally recorded the

satisfaction on the basis of the representations made. This constitutes abdication of statutory responsibility under Sec.8 of the 1955 Act.

The challenge to the impugned notification is required to be considered in the context of the scope and spectrum of the constitutional guarantee (to the freedom of speech and expression) against State regulation, within the framework of the Constitution.

Article.19(1)(a) provides that all citizens shall have the right to freedom of speech and expression. Article. 19(2) reads:

" Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of (the sovereignty and integrity of India), the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence."

The Cinematograph Act,1952 (Central Act 37/52) (the 1952 Act) enacts (Sec.4), that any person desiring to exhibit any film shall make an application to the Board (constituted by the Central Government under Sec.3) for a certificate in respect thereof and empowers the Board, after examining or having the film examined in the prescribed manner to sanction the film either with restrictions or without restrictions as specified in the provision or may refuse to sanction the film for public exhibition. Sub-section.2 of Section.4 requires the Board to provide an opportunity to the applicant for certification to represent his views on the matter. Sec.5-A(3) enacts that subject to the other provisions in the Act a certificate granted by the Board under the Section shall be valid throughout India, for a period of ten years.

Sec.5-B(1) sets out the principles for guidance in certifying films. These read:

A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate the film or any part of it is against the interests of (the sovereignty and integrity of India) the security of the State, friendly relations with foreign State, public order, decency or morality or involves defamation or contempt of Court or is likely to incite the commission of any offence.

Under Section.13 of the 1952 Act, the Central Government or a local authority is empowered to suspend exhibition of films in certain cases. The provision reads as under:

(1) The Lieutenant-Governor or, as the case may be, the Chief Commissioner, in respect of the (whole or any part of a Union Territory) and the District Magistrate in respect of the district within his jurisdiction, may, if he is of opinion that any film which is being publicly exhibited is likely to cause a breach of the peace, by order, suspend the exhibition of the film and during such suspension the film shall be deemed to be an uncertified film in the State, Part or district, as the case may be.

(2) Where an order under sub-section(1) has been issued by the Chief Commissioner or a District Magistrate, as the case may be, a copy thereof, together with a statement of reasons thereof, shall forthwith be forwarded by the person making same to the Central Government, and the Central Government may either confirm or discharge the order.

(3) An order made under this section shall remain in force for a period of two months from the date thereof, but the Central government may, if it is of opinion that the order should continue in force, direct that the period of suspension shall be extended by such further period as it thinks fit.

In the 1995 Act—a State legislation, Section 8 confers power on the Government or the District Collector, as the case may be, to suspend the exhibition of films in certain cases. The provision reads:

> **8. Power of Government or District Collector to suspend exhibition of films in certain cases:--**
>
> *(1) The Government in respect of the whole of the State or any part thereof, and the District Collector in respect of any area within the local limits of his jurisdiction may, if he is of opinion that a film which is being publicly exhibited is likely to cause a breach of the peace, by order, suspend the exhibition of the film, and during such suspension, no person shall exhibit such film or permit it to be exhibited in the State or in such part thereof, or in such area, as the case may be.*
>
> *(2) Where an order under sub-section (1) has been issued by the District Collector, a copy thereof together with a statement of reasons therefore, shall forthwith be forwarded by him to the Government and the Government may on a consideration of all the facts of the case confirm, modify or cancel the other.*
>
> *(3) An order made under this section shall remain in force for a period of two months from the date thereof, but the Government may, if it is of opinion that the order should continue to be in force, direct that the period of suspension shall be extended by such further period as it thinks fit.*

The impugned notification is issued in purported exercise of the power under Section 8 (1) of this Act. None of the writ petitions impeach the validity of Section 8 of the 1955 Act.

In the context of the rival pleadings, the reliefs sought and the process leading to the impugned notification, the issue that falls for consideration is whether the impugned notification suspending the screening of the film *The Da Vinci Code*,

constitutes an executive action inconsistent with the extent of regulatory power available under Section 8 (1) of the 1955 Act, read in the context of the fundamental right to freedom of speech and expression guaranteed under Article 19 (1)(a) and the permissible extent of restrictions that may be placed upon the right *qua* article 19(2).

The provisions of Section 8 not having been challenged, the validity of this provision is an uncontested assumption in this *lis*. Nonetheless, the power of the Government to suspend the execution of the film on the formation of an opinion that it is likely to cause a breach of peace will have to be tested within the framework of Article 19(1)(a) read with 19(2). It is a settled principle of interpretation that even where a legislation employs an expression of wide import suggesting conferment of broad and facially uninstructed power, the legislative expression and the contours of the power must, the language permitting, be construed restrictively if need be and in conformity with the constitutional limits on legislative power. An interpretation that sustains the validity of the legislation must be preferred.

On the aforesaid analysis, the identification of the extent of the free speech and expression rights of the producers and distributors of film *The Da Vinci Code* under our constitutional architecture, is compelling.

The first amendment to the American Constitution was the inspiration for the freedoms guaranteed in Art.19(1)(a). The two provisions are however dissimilar. The first amendment enacts an absolute prohibition thus imposing a heavy burden on anyone transgressing the right to justify the transgression. Since the constitutional provision contained no exceptions, these had to be evolved by judicial decisions. Over a period of time, U.S. courts are seen to have limited the scope of the exceptions with

increasing vigor and stringency.

Under our Constitution, the limitations on the guaranteed rights (U/Art.19) are also textually provided [Art. 19(2) to (6)]. Our Constitution expressly permits Laws that could curtail the expanse of the freedom guaranteed under Art. 19(1)(a). The problem however is one essentially of construction; of identification whether a questioned law falls within Art. 19(2). Apart from the permissible areas of restrictions specified, Art.19(2) enjoins a requirement that the restriction provided by a law must be reasonable. Whether the restrictions imposed by a law, in relation to the specified circumstances for which alone restrictions could be imposed, are reasonable restrictions is eventually an area for judicial determination.

I n ***Express News Papers Pvt. Ltd. V Union***[2] Bhagawati,J found a paucity of authority in India to guide identification of the scope and extent of the fundamental right to freedom of speech and expression. He stated:

" … the fundamental right to the freedom of speech and expression enshrined in … our Constitution is based on (the provisions in) Amendment I of the Constitution of the United States … and it would be therefore legitimate and proper to refer to those decisions of (the U.S. Sup. Ct.) to appreciate the true nature, scope and extent of this right in spite of the warning administered by this Court against use of American and other cases. "

While holding that pre-censorship of films was unsustainable in view of the First Amendment, Douglas,J in ***Kingsley Corp. v Regents of the University of New York***[3] pointed out : " *If we had a provision in our Constitution for 'reasonable' regulation of the press such as India has included in hers there would be room for argument that censorship in the interest of morality would be permissible."*

However the textual distinction between our and the US Constitution notwithstanding, (in freedom of speech and expression areas) our courts have consistently referred to and relied on precedents under the U.S. 1st Amendment and from other liberal constitutional jurisdictions since these values inform and substrate all liberal civil societies governed by a constitutional order, particularly under democratic dispensation. In this context of the Indian jurisprudence it is useful to refer for guidance to decisions relating to the First Amendment while relying for instruction on relevant precedents under our Constitution to the extent available.

Freedom of speech and expression is a vital and cherished value in all liberal societies and is often a constitutionally protected value. Under a constitutional dispensation, free speech values share with other values, a relative and not absolute space. Identification of the extent of the right and of the legitimacy of the restraints upon it imposed by legislative or executive determinations are often problematic and essentially contextual, conditioned by complex variables. There is however, in all contexts, a deep suspicion about State regulation of free speech and expression, thus inviting rigorous judicial scrutiny.

In a famous passage in his dissenting judgment in ***Abrams v. US***[4] Oliver Wendell Holmes, J propounded the interest in discovering truth as an enduring argument for defending the right to free speech and expression. Holmes said: '*But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—*

that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.'

The apparently absolutist call on the free speech and expression value was however tempered by Holmes, J himself in ***Schenk v. US***[5] when he pointed out that the *most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic*. The "clear and present danger" principle was born and has flourished ever since.

Of contextual necessity and in recognition of social and societal realities, reasonable restrictions on the exercise of free speech and expression evolved in the constitutional jurisprudence in the United States. In India, the Constitution specifies the grounds on which reasonable restrictions could be imposed on the rights guaranteed under Article 19(1)(a), in Article 19(2).

Apart from the arguments concerned with the importance of discovering truth through the exercise of free speech and expression, there are other important interests in support of defending this value. Free speech is an integral aspect of an individual's right to self-development and fulfillment. What an individual is allowed to say, write, hear and read, influences the personality and its growth. Freedom of speech is particularly important to an individual's self-fulfillment. It is uniquely valuable in intellectual self-development. It is a reflective mind conscious of options and the possibilities for growth that distinguishes human beings from other animal species. This freedom is intrinsically linked to other fundamental freedoms, which define humankind, freedom of religion, thought and conscience. Unreasonable restrictions on freedom of speech

negate development and undermine fulfillment as individuals.

Unreasonable restrictions on the right to speech and expression diminish the content of democratic and liberal civil societies and negatively impact other valuable rights like those to education, to cultural goods and more important the achievement of a level of moral autonomy. A person is independent in the social context if he is free to weigh for himself the competing arguments for various courses of action that others wish to put before him. The State therefore may not be entitled to suppress speech on the ground that either its audience will form harmful beliefs or may commit harmful acts as a result of such beliefs, unless the commission of harmful acts is a real, close and imminent consequence of the speech in question.

Another argument in favour of freedom of speech and expression is that it conduces informed citizen participation in the democratic process. This is however in the context of political speech. Brandeis, J in ***Whitney vs. California***[6] spelt out this aspect of the justification for free speech and expression: *'Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary… They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; … that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of American government.'*

The relationship and delicate balance between the freedoms guaranteed by Article 19(1) and the restrictions that may validly be imposed upon them by the State, under Article

19(2) to (6) has been succinctly explained by Seervai:

The rights represent the claims of the individual, the limitations protect the claims of other individuals and the claims of Society or the State; to say that the rights are fundamental and the limitations are not is to destroy the balance which article 19 was designed to achieve. To say this is not to belittle fundamental rights but only to say that the rights are not absolute and can be enjoyed only in an orderly society.[7]

Robert Jackson, J in a dissenting opinion in ***Terminiello Vs. Chicago***[8] expounded this balance in telling phrase – *"The invocation of constitutional liberties as part of the strategy for overthrowing them (encroachments on the freedom of speech and expression) presents a dilemma to a free people' … 'The choice is not between order and liberty, but between liberty with order and anarchy without either."*

Integral to the judicial exercise in this case is the task of identifying the test for determining whether the impugned restriction is reasonable in the context of Article 19(2). In this case we are concerned with the validity and therefore the reasonableness of the regulatory exercise of the State suspending the screening of the film, exercising executive and discretionary power. However, precedents expounding the tests for determining the validity of a legislative enactment conferring executive authority power to impose restrictions under Article 19 (2) to (6), afford substantive guidance for considering the validity of the impugned State executive action.

Though in the context of a different guaranteed freedom under Article 19, nevertheless relevant to the purposes of Article 19(1) (a) and 19(2), *Mahajan, J in* ***Chintaman Rao v M.P.***[9] pointed out that reasonable restriction means *…limitation*

imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course, which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in article 19(1)(g) and the social control permitted by article 19(6) it must be held to be wanting in that quality'

Some of the restrictions that may be imposed on the fundamental rights contained in Article 19(1) are in relation to more than one of the specified freedoms. Though restrictions may be imposed on the different rights in Article 19 (1) on a common ground, for instances *in the interest of public order,* on the rights contained in Article 19(1) (a)(b) and (c), the reasonableness of the restrictions must be judged not with reference to the ground on which it can be imposed but with reference to the fundamental right which is restricted.

Patanjali Sastri, C.J. (as His Lordship then was) pointed out in ***Madras v V.G. Row***[10] *… a decision dealing with the validity of restrictions imposed on one of the rights conferred by Art. 19(1) cannot have much value as a precedent for adjudging the validity of the restrictions imposed on another right, even when the constitutional criterion is the same, namely, reasonableness, as the conclusion must depend on the cumulative effect of the varying facts and circumstances of each case.*

In a recent Constitution Bench Judgment (7 judges) – ***State of Gujarat v Mirzapur Moti Kureshi Kassab Jamat***[11]**,** Chief Justice Lahoti speaking for the majority, considered

whether a regulation or restriction on the right guaranteed under Art. 19(1) includes total prohibition of the right and the tests to identify whether the total prohibition would constitute a reasonable restriction within the meaning of Art. 19 (2 to 6). Lahoti,J summarized the ratio culled out from several earlier precedents and stated that restriction includes prohibition; the standard for judging the reasonability of restriction or a restriction amounting to prohibition remains the same, except that a total prohibition must also satisfy the test that a lesser alternative would be inadequate; and the question whether a restriction in effect amounts to a total prohibition is a question of fact which shall have to be determined with regard to the facts and circumstances of each case, the ambit of the right and the effect of the restriction upon the exercise of that right. (emphasis added)

In ***Om Kumar v Union of India***[12] Jagannatha Rao,J reiterated the well established principle that in the context of considering the validity of legislative action restricting or impairing the rights guaranteed under Art.19, the burden of proof to show that the restriction was reasonable lay on the State; and (b) applying the doctrine of proportionality to such legislative provisions, courts have held invalid legislation which arbitrarily or excessively invaded a right without striking a proper balance between the rights guaranteed and the control permissible under Art.19(2) to (6).

Under our constitutional scheme, the Legislative and Executive power is consecrated to the other two great branches of the State. Nevertheless, no other branch of our Government is as qualified to identify, draw and effectuate the boundaries between the rights of individuals and those of society as the Judicial branch. The Legislative and executive branches are

known on occasion to yield too easily to the politically expedient and the popular. Freedom of speech and expression is too cherished a constitutional value. It cannot be absolute and it cannot also be subject to the heckler's veto finding resonance in State action. Alexander Meiklejohn a celebrated educator-philosopher pointed out that the Constitution does not prohibit the abridging of speech ***but it does forbid the abridging of freedom of speech*** [Free speech and its relation to Self-Government (New York - Harper and Brothers – 1948)]. In a celebrated passage in this work Meiklejohn said:

"If, then, on any occasion in the United States it is allowable to say that the Constitution is a good document it is equally allowable, in that situation, to say that the Constitution is a bad document. If a public building may be used in which to say, in time of war, that the war is justified, then the same building may be used in which to say that it is not justified. If it be publicly argued that conscription for armed service is moral and necessary, it may likewise be publicly argued that it is immoral and unnecessary. If it may be said that American political institutions are superior to those of England or Russia or Germany, it may, with equal freedom, be said that those of England or Russia or Germany are superior to ours ----- When a question of policy is 'before the House' free men choose it not with their eyes shut, but with their eyes open. To be afraid of ideas, any idea, is to be unfit for self-Government." (emphasis supplied)

Terminiello (8 supra) provides a valuable illustration on facts apposite to our *lis*. ***Terminiello*** was convicted of disorderly conduct based on a speech he delivered in an auditorium filled to capacity with over eight hundred persons present. Outside a crowd of over one thousand gathered to protest against the

meeting. A cordon of policemen was assigned to maintain order. They could not wholly contain or prevent several disturbances. From among the angry and turbulent crowd, some threw stink bombs and broke the windows. Terminiello also goaded his opponents, referring to them in pejorative epithets. At trial, the jury was instructed by the judge that it could convict (**on the charge of breach of peace**) if it found that Terminiello's speech included expressions that ***stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance.***

Douglas. J writing for the majority stated: *The vitality of civil and political institutions in our society depends on free discussion, it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. ----- Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea* (emphasis supplied).

Although in terms Art. 19 (1)(a) does not mention the freedom of the press, our Supreme Court settled the position since quite early that freedom of speech and expression includes freedom of the press ***([13])***.

Intrinsic to and inseparable from the right is the right of an individual to disseminate information and ideas. The existence of a public interest in speech is the necessary condition for its protection. The right to receive ideas and information is an equal justification for the protection of the right. A mirror image

of the right to speech is the right to know, an individuals right to acquire desired information, a diversity of viewpoints, unorthodox or contra-dogmatic points of view, free from governmental veto and undue hindrance.

The richness and importance of the right (to freedom of speech and expression) invites the question whether the State, acting as the guardian of public morality is entitled to remove an unpopular or even an offensive idea or creative impulse from the social lexicon. In ***Cohen v California***[14] the court held that Government may not purge public dialogue of unwelcome words or symbols, just as it may not prohibit unwelcome ideas. In ***Street v New York***[15] Justice Harlan writing the opinion for the court said: *It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of the hearers.*

Another nuance of the right is that executive authority may not suppress otherwise protected speech and expression if imminent spectator violence can be satisfactorily prevented, contained or curbed with reasonable crowd control techniques. This test found expression in ***Feiner v New York***[16].

Therefore the right to communicate and receive ideas, facts, knowledge, information, beliefs, theories, creative and emotive impulses by speech or by written word, drama, theatre, dance, music, film, through a news paper, magazine or book is an essential component of the protected right and may be exercised untrammeled by unreasonable Governmental restraint.

Freedom of speech and expression and constitutionally legitimate restraint upon it is an area brisling with considerable

complexity and susceptible to several diverse normative assumptions. Competing values and conflicts permeate the area. To illustrate, there is an apparent conflict of free speech values between free press and fair trial, in areas of defamation particularly when a person allegedly defamed is one holding a public office. Competing value judgments are also involved in areas relating to free speech and personal control over information where the conflict is between the right to public information and a person or class of persons' right to privacy or to substantial State interest in confidentiality. Obscenity and pornography also pose challenges to determination of the balance between free speech and its proscription in the interests of protecting the contemporaneous moral standards of the community. Commercial speech over recent years has evolved its own cosmos of free speech jurisprudence. All these areas inviting value judgments are essentially concerned with content-based abridgments to the freedom of speech and expression.

In the case on hand the impugned notification records potential "breach of peace" as the justification for the prior restraint – the suspension of screening of the film. The asserted potential threat is not on the ground that the content of the film is sexually explicit, obscene or pornographic. In the context of the permissible area of regulation u/Art. 19(2), it is not the case of the State that the film in any manner pejoratively impacts either the sovereignty and integrity of India, decency or morality, or constitutes contempt of court, defamation or incitement to offence.

Presumptively the "breach of peace" justification under Sec.8 of the 1955 Act, is presented by the State as falling within the expression "public order" in Art.19(2). Offending the

sensibilities of those believing in or professing belief in Christianity as represented by a few individuals and organizations, is the State's justification for the impugned action.

All categories of speech and expression do not enjoy the same value and degree of protection in the context of Art. 19(1)(a). Speech and expression impacting privacy rights, commercial speech, speech allegedly diminutive of the right to free trial, contumacious speech, speech in conflict with decency or morality or one constituting defamation or incitement to offence, particularly where the potential or assumed defamation is in relation to a person who is not in public office, are perhaps expressional categories which enjoy less than full measure of constitutional protection. Speech which clearly and proximally incites hatred and disaffection of even tolerant members of a sub-culture within a civil society might also be a category of speech falling within the above package i.e., enjoying less than full constitutional protection.

However, since in the constitutional context of Art. 19(1)(a) it is the freedom of speech and expression which is guaranteed and not the State's right to impose restrictions thereupon, even categories of speech and expression which might normatively enjoy less than the full spectrum of constitutional protection must be subject to rational analysis and a challenged State action impacting the guaranteed right must be strictly scrutinized to test (a) whether it falls within the permissible area of restriction; (b) whether the restriction is reasonable; and (c) whether there are available less restrictive alternatives that the State ought to have pursued before resorting to the impugned action.

The impugned film is based on Dan Brown's novel. It is a

work of fiction. The novel and its audio – visual exposition – the film, are professedly a work of fiction. The Board before recording its informed and considered satisfaction under the provisions of the 1952 Act and granting the certification on 23.5.2006, at the instance of the Union Government had organized a special screening for representative classes of Christian and other objectors to the film and has granted the certificate after requiring the producers to incorporate a disclaimer both before and after the film (that the characters and incidents portrayed and the names in the film are fictitious and bear no similarity with the name, character or history of any person). The film has thus passed censorial muster on its certification by an expert statutory body constituted under a federal legislation.

Earlier in this analysis it is considered that freedom of speech and expression is an inalienable component to the fulfillment of rational human personality. Intrinsic to such fulfillment is the right of an individual to be informed about facts, ideas and theories about scientific, historical, technological, social, political, religious and cultural developments, about competing, even combative doctrines, theories and viewpoints on religious, social and political institutions and the personalities which influence these institutions; the right to be informed not only about orthodoxy and dogma but about heterodoxy and counter-dogma as well. The choice of what information to receive is a protected individual choice, subject to State control and regulation only for compelling Governmental purposes within the defined spectrum of purposes *qua* Art. 19(2).

Freedom of speech and expression discourse in the Art. 19 context must therefore accommodate the right to know, the

right not to know, the right of open minded liberal and curious individuals as well as of members of closed communities and cultures. While considering the reasonableness of a State imposed restraint it is therefore inevitable that the reason for the restraint, its legitimacy in the context of the protected freedom and the permissible area of its invasion by the State and whether the State could have employed less restrictive alternatives of restraint, must all be considered.

We live in an information and communication obsessed period of human civilization. Contemporaneous man is therefore subject to voluminous and diverse printed and audio-visual material. Such material may be obnoxious, may constitute a visual clutter, may offend one's sensibilities, fundamental assumptions of faith or of social and political institutions or may also be offensive to deeply held beliefs. The question therefore arises, a question that goes to the heart of the discourse as to freedom of speech and expression, whether an individual's freedom may be exercised only when there is universal approbation of the content of the speech and expression.

Since freedom to speak and express and its corollary the right to knowledge and information includes the freedom to be protected from speech, expression and information that an individual does not desire to expose himself to, the problem is one of accommodation of these corollary and competing values which are in a way complementary though apparently in conflict.

Courts in other jurisdictions have grappled with this balancing act. In areas involving obscene and near obscene material and commercial speech, in the US, courts have solved the dilemma of competing claims by finding a way for localities

to protect the quality and character of life without at the same time making the closed mind a principal feature of an open society or an unwilling recipient of information the arbiter to veto or restrict freedom of speech and expression. This solution has been applied in areas of obscenity - adult theatres – ***Young v American Mini Theatres, Inc.***[17]; ***City of Renton v Playtime Theatres, Inc.***[18].

Similarly, in areas of commercial speech it was held that the Government may ban forms of communication more likely to deceive the public than to inform them and commercial speech regarding illegal activity – ***Friedman v Rogers***[19]; ***Warner-Lambert Co. v FTC***[20]; ***Pittsburgh Press Co. v Pittsburgh Commission on Human Relations***[21].

While protecting the competing value in this area viz., not to receive information in the privacy of the home, in the US, courts have not generally allowed the Government to suppress speech only to protect unwilling listeners from 'offensive' expression unless substantial privacy interests have been invaded – ***Cohen v California***[22]. In ***Rowan v US Post Office Dept.***[23] it was held that the privacy interest of unwilling listeners are the strongest in the home. In ***Organization for a Better Austin v Keefe***[24], Burger CJ, while invalidating a Government injunction against leaf letting in suburban residential areas as unjustified prior restraint, distinguished the right of privacy involved in stopping the flow of information into one's household from preventing the flow of the same information to the public.

The U.S. courts while adopting a more liberal approach to Governmental restraint of information intrusion into the privacy

of the home have been vigorous in prohibiting restraint on the freedom to speak and express in the public place. Brandies, J as early as in 1932 – ***Packer Corp. v Utah ([25])*** analyzed the predicament of the captive audience. He wrote: *"Other forms of advertising are ordinarily seen as a matter of choice on the part of the observer. The young as well as the adult have the message of the Billboard thrust upon them … In the case of newspapers and magazines there must be some seeking by the one who is to see and read the advertisement. The radio can be turned out, but not so the Billboard or the street car placard."*

In public places, individuals' privacy interest in avoiding offensive communication is generally considered insubstantial unless such individual is considered a captive audience in the context of speech and expression and the manner in which it is communicated. Outside the home, the jurisprudence in the U.S. appears to be that the burden is generally on the observer or the listener to avert his eyes or plug his ears against verbal assaults, lurid advertisements, explicit books and magazines and other offensive intrusions which increasingly inform the habitat of urban life in particular and of all communities in general.

Illustrating the courts intensity of screening State action restricting freedom of speech and expression is ***Butler v Michigan ([26])*** where the court invalidated the Michigan legislation that banned the publication, sale or distribution of reading material inappropriate for children. The court frowned upon the Statute, which quarantined adults to a literary and visual environment that is safe for children. Frankfurter J, speaking for 8 justices, with Black J concurring, held that the impugned legislation was not reasonably restricted to the evil

with which it is sought to deal. *"The incidence of this enactment is to reduce the adult population of Michigan to reading only what is fit for children. It thereby arbitrarily curtails one of those liberties of the individual, now enshrined in the Due Process Clause of the Fourteenth Amendment, that history has attested as the indispensable condition for the maintenance and progress of a free society."*

Four months to the day after the adoption of the Constitution of India, on 26.5.1950 came to be delivered the earliest judgment of the Supreme Court explaining the scope of the expression "freedom of speech and expression" in Art. 19(1)(a); in ***Romesh Thappar v The State of Madras***[27], the entry and circulation of Thappar's weekly journal "Cross Roads" was banned in the State of Madras " for the purpose of securing the public safety and maintenance of public order" under the provisions of Sec. 9(1-A) of the Madras Maintenance of Public Order Act 1949 ('Madras Act'). Thappar challenged the ban under Art.32 of the Constitution. This was before the amendment of Art.19(2) and 'Public Order' was not one of the grounds on which reasonable restrictions could be imposed on the exercise of the freedoms guaranteed under Art.19(1)(a). The majority per Patanjali Sastri, J (Fazl Ali,J dissenting) held that Sec.9(1-A) of the Madras Act authorized imposition of restriction for the wider purposes of securing public safety or the maintenance of public order which fall outside the scope of the authorized restriction under clause(2) of Art.19 and therefore Sec.9(1-A) of the Madras Act was void and unconstitutional and consequently quashed the prohibition. Art.19(2) had since been amended and "Public Order" is now an authorized ground for imposing reasonable restrictions on the freedoms guaranteed by Art.19(1)(a). However, Sastri J's exposition of the

importance of freedom of speech and expression is timeless. He pointed out that stringent limits had been set to permissible legislative abridgment of the right of free speech and expression (under the Constitution) and this was doubtless due to the realization that freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular Government, is possible. In the words of Sastri J:

> *" A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected with Madison who was 'the leading spirit in the preparation of the First Amendment of the Federal Constitution', that 'it is better to leave a few of its noxious branches to their luxuriant growth than, by pruning them away, to injure the vigour of those yielding the proper fruits.'" (Quoted in* ***Near v Minnesota****, 283 U.S 607 at 717-8).*

In ***Raj Kapoor and others v State and others (***[28]***)*** V.R. Krishna Iyer,J speaking for the court dealing with a *pro bono publico* prosecution against the producer, actor and other connected with the film "Satyam Sivam Sundaram" on the ground of prurience and obscenity, observed:

> *" The world's greatest paintings, sculptures, songs and dances, India's lustrous heritage, the Konarka and Khajurahos, lofty epics, luscious in patches, may be asphyxiated by law, if prudes and prigs and State moralists prescribe paradigms and proscribe heterodoxies."*

In ***S. Rangarajan v P. Jagjivan Rao and others (***[29]***)*** a Tamil film "Ore Oru Gramathile" was eventually granted a 'U' certificate by the Censor Board i.e., certified for unrestricted public exhibition. The grant of certificate was challenged before the High Court. A learned single Judge dismissed the writ petition. On appeal a Division Bench reversed and revoked the

certificate. The Union Government and the producer applied for special leave and that is how the issue came to be considered by the Supreme Court.

The theme of the film was a criticism on the reservation policy and the exploitative effects of caste considerations informing the reservation policy. The minority members of the Review Committee (which eventually granted the certificate to the film by majority) recommended rejection of the certificate on several grounds (a) that it is critical of the reservation policy of the Government and in a biased and distorted fashion; (b) that the film would create law and order problems; (c) that it would hurt the feelings and sentiments of certain sections of the public; and (d) that the treatment of the theme was irresponsible. The Supreme Court allowed the appeals, reversed the judgment of the Division Bench of the High Court and dismissed the writ petitions. Jagannatha Shetty,J recorded the *per curiam* opinion. Dealing with the problem of defining the area of freedom of expression when it appears to conflict with various social interests enumerated under Art.19(2),Shetty,J said:

> *"Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a power keg'."*

In ***Union of India v K.M. Shankarappa ([30])*** the validity ofSec.6(1) of the 1952 Act came to be considered. U/Sec.6(1) of the 1952 Act the Central Government was empowered to *suo motu* called for the record of any proceeding in relation to any

film pending before or decided by the Board or by a Tribunal (constituted u/Sec.5C) and to pass such order as it thought fit and require the Board to dispose of the mater in conformity with the order of the Central Government. The proviso to Sec.6(1) also enabled the Central Government not to disclose any fact which it considered against public interest, to disclose. Initially the Karnataka High Court struck down portions of Sec.6(1). Rejecting the appeal and dealing with the appellant – Union of India's contention that potential law and order situations require the existence of such power, the Supreme Court held:

> *"We fail to understand the apprehension expressed by the learned counsel that there may be a law and order situation. Once an expert body has considered the impact of the film on the public and has cleared the film, it is no excuse to say that there may be a law and order situation. It is for the State Government concerned to see that law and order is maintained. In any democratic society there are bound to be divergent views. Merely because a small section of the society has a different view, from that as taken by the Tribunal, and choose to express their views by unlawful means would be no ground for the executive to review or revise a decision of the Tribunal. In such a case, the clear duty of the Government is to ensure that law and order is maintained by taking appropriate actions against persons who choose to breach the law."* (emphasis added)

In ***Sree Raghavendra Films v Government of Andhra Pradesh and others*** ([31]), exhibition of the film 'Bombay' in its Telugu version was suspended in exercise of the powers u/Sec.8(1) of the 1955 Act and Sec.22(2)(a) of the Hyderabad City Police Act, 1348 Fasli. That the order of suspension was passed despite a certificate issued by the Board for unrestricted exhibition of the film was not in dispute. The suspension was imposed, identical to the case on hand, on the ground that several leaders and organizations representing certain

communities made representations immediately after the release of the film that certain portions of the film, hurt their sentiments. An additional fact was that certain miscreants entered one of the theatres where the film had been exhibited, shouted slogans and damaged the furniture. There was also an anonymous phone call about planting of bombs at another theatre, which was however found to be a hoax. The court concluded that none of the authorities who passed the impugned suspension order had seen the film. While granting an interim order suspending the order impugned in the writ petition (while directing the exhibitors not to show certain scenes specified in the interim order), the learned Judge had this to say about the exercise of power (u/Sec.8(1) of the 1955 Act) by an authority without even seeing the film in question

> *" Further, I am of the opinion that in case of a film, the formation of opinion by the competent authority can only be on seeing the picture. The authority may have any number of reports or representations before it, but no opinion of his own can be formed without seeking the picture. The opinion of others or representations and the material placed before the authority, in a given case, may be conflicting, but then how to form an opinion with reference to exhibition of film that can only be after seeing the picture. In the present case, the petitioner emphatically and unambiguously stated in the affidavit that neither the second respondent nor the third respondent saw the film before passing the impugned order. The counter filed on behalf of the second respondent was evasive and casually stated that he has also seen the picture. He has not given as to when he saw the picture, where he saw the picture. Learned senior counsel appearing on behalf of the petitioner, Sri E. Manohar, strenuously contended, on the basis of reported interview contained in the weekly "Sivaranjani", that the statement made on oath by the second respondent is false. It is not necessary for me to go into this question. Prima facie, I am of the opinion that when a specific allegation is made in the affidavit that the authority before passing the impugned order has not seen the picture, second respondent, if he has seen the picture before passing the impugned order, would have stated so. No such averment is*

made in the counter affidavit. I am prima facie of the view, having regard to the material placed before me, that the second respondent has not seen the picture before passing the impugned orders. Whether he has seen the picture subsequently or not is not material for the disposal of W.P.M.P. So far as third respondent is concerned, it is not her case that she has seen the picture at all. I am further, prima facie, of the opinion that there is no material before the third respondent for passing the impugned order. Obviously, third respondent passed the impugned order by following the impugned order of the second respondent."

Suffice it to record for the purposes of this case that the authority who passed the impugned order dated 01.06.2006 has also based his "satisfaction" on the representations made and without even seeing the film.

Learned counsel for the petitioner informed this court that a Vacation Bench of the Supreme Court has rejected two *pro bono publico* writ petitions seeking ban on the screening of the film " The Da Vinci Code". The actual order passed by the Supreme Court was however not placed for the perusal of this court except a copy of a press report setting out certain observations reported to have been made by the learned Bench while rejecting the writ petitions at the stage of admission.

A special screening was arranged at which this court has seen the film on 14.06.2006 along with the counsel for the respective parties. Clearly and professedly the film is a work of fiction. The core story line and the theme is as has been briefly outlined hereinabove, in the judgment. There is nothing in the theme of the film, either in the story-line, the dialogues or the visual exposition which denigrates Jesus or His Ministry. No doubt the fictional account is orchestrated and unfolds around an alternate interpretation that the Christ was essentially a mortal being who married Mary Magdalene and left a bloodline which was the "Sang Real" (Royal Blood) – the Holy Grail. This

alternate interpretation, assumption or dogma (or even heresy-according to individual perception) does not appear to be the original though fictional creation of the novelist Dan Brown, all on his own.

In 1982 Michael Baigent, Richard Leigh & Henry Lincoln's "The Holy Blood and the Holy Grail" propounded a substantially similar and provocative interpretation of the Holy Grail and of the bloodline. The book was also widely read, became a best seller and received rave and controversial reviews. The conclusions in the above book are arrived at on broad inferences and some speculation based on well-documented facts of history and on substantial and impressive research. There have been numerous researched works since then which have propounded substantially the same theme. The same authors published "The Messianic Legacy" in 1986. Margaret Starbird, a Roman Catholic scholar with a Masters Degree from the University of Maryland and a sabbatical at the Vanderbilt Divinity School authored "The Woman with the Alabaster Jar". The conclusions in Starbird's provocative book also draw from an extensive study of history, heraldry, symbolism, medieval art, mythology, 1st century Judaic cultural practices, psychology and the Bible itself. In 1999 was published Laurence Gardner's "Genesis of the Grail Kings"; and in 2001 "Bloodline of the Holy Grail" by the same author. In 1996 Richard Andrews and Paul Schellenberger's book "The Tomb of God" propounded the conclusion that Mount Cardou is the last resting place of the remains of Jesus Christ. In late 20th century an ancient text in Coptic in papyrus manuscript was uncovered which is believed to be a gospel by Judas, who is considered as the betrayer of Jesus at the last Supper, in traditional Christian Dogma. A reputed international journal the

“National Geographic” May 2006, carries a brief article on the discovery of this ancient text, tracing of its provenance, testing of its antiquity including by the carbon dating process and a brief account of a conversation in the text between Jesus and Judas which contradicts current Christian dogma, belief and the contemporaneous Biblical account and interpretation as well.

The point is not whether these alternate interpretations, accounts, dogma, speculations or theories are true. Antiquities of every kind are encompassed in different proportions of fact, fiction, belief, myth and legend and present myriad hues of reality according to the subjectivity of the observer’s belief. The point is whether it is a legitimate human occupation to question, probe, be skeptical about and inquire into what some others fundamentally believe and whether the right of an individual to be inquisitive or a non-conformist is not a protected value in contemporaneous civil society.

Cultural, political or religious personalities having wide recognition and of medieval or ancient vintage are iconic and multifaceted persona, at the same time historical figure, commanding faith and belief, awe and reverence, or disapprobation and dissent, myth, legend and mystery; multifaceted since different people or classes of people or sub-cultures of society perceive and believe different aspects of the complex of the personality and differently at different times.

If Jesus is a historical personality as is widely assumed, free speech values legitimize debate and contest, discourse and dissent about the persona. If Jesus were a legend, then too is debate and refinement of the legend legitimate. This is true of every religious and iconic personality and this the condition over the millennia of History. Such dissonance is an essential attribute of the rational human personality. The values of free

speech and expression command protection of such dissonance.

Within every great religion there are variations even of dogma. Dwaita, Adwaita and Visista-Adwaita, Shaivism, Vaishnavism and a whole lot of heterogeneities in Hinduism; Shias and Sunnis, Admedias and other nuances of Islmaic dogma; Roman Catholics, Protestants, Lutherans, the Greek Orthodox Church, the Coptic Church and several other denominational diversities in Christian thought attest the essential diversity of all human thought and belief. There are inevitably, heterodoxies within orthodoxies. The unity of mankind is an assumption of tolerance, a symbiosis of diversity. Freedom of speech and expression contributes to the richness and the equilibrium of human existence.

The film has passed censorial muster by the statutory Tribunal – the Board. It is certified as fit for adult viewing throughout India. An expert statutory body – the Board, was satisfied on rational exercise of its statutory discretion and after considering the views of objectors who were representatives of the Christian faith, that the adult and discerning viewer would, if he chose to view the film not suffer an outrage of sensibility, leading to breach of public order.

The objectors to the exhibition of the film are not a captive audience. Casual passers-by on the public street, those using public transport or by compulsive exposure to billboards are not involuntarily and forcibly exposed to the contents of this film. The film is a work of fiction and is exhibited for commercial purposes. Those who go to the theatre are required to buy a ticket to see the film. Thus they watch it at their volition and by conscious choice. Those who are offended by the content or its theme are free to avoid watching the film. The objectors are

thus not captive audience of the film. Dissenters of speech and expression have no censorial right to the intellectual, moral, religious, dogmatic or other choices of all mankind. The Constitution of India does not confer or tolerate such individualized, hyper-sensitive private censorial intrusion into and regulation of the guaranteed freedom of others. The authority that passed the impugned order has not even seen the film. He mechanically certified the heckler's veto of a few objectors, on dictation as it were, rather than informed satisfaction of his own, as legislatively ordained. This is not rational regulation of a protected constitutional right – freedom of speech and expression.

The impugned notification suspending the exhibition of the film, in the light of the analysis and for the reasons recorded in this judgment, constitutes an extravagant arbitrary, casual and wholly irrational exercise of a very sensitive and responsible executive power viz., regulation of a cherished, valued and guaranteed fundamental freedom, of speech and expression. The notification/order in G.O.Rt. No. 1012, Home (General.A) Department, dated 01.06.2006 is accordingly quashed. As the State has imposed a patently unreasonable restriction on the guaranteed fundamental freedom of speech and expression and by a wholly negligent and irresponsible exercise of executive power, this court considers it appropriate to allow the writ petitions with costs of Rs.10,000/- each in W.P.Nos. 11006 and 11381 of 2006 (the petitioners being the distributors of the film have suffered economic detriment) and Rs.2,500/- to the petitioner in W.P. No. 11575 of 2006 [a citizen whose right to view the film as a complementarity of the right guaranteed under Art. 19(1)(a) has been infringed]. The costs as above, to the respective petitioners shall be paid by the State Government

within three weeks from today.

The writ petitions are accordingly allowed, with costs.

Dated: .06.2006
LR Copy to be marked ----------
B/o Justice G. Raghuram
Pvsn, Pvks, Tsnr

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[1] Identity and Violence – The Illusion of Destiny – Amartya Sen

[2] AIR 1958 SC 578

[3] 3 L.Ed. 2d 1512

[4] 250 US 616 (1919)

[5] 249 US 47, 52 (1919)

[6] 274 US 357 (1927)

[7] H.M. Seervai – Constitutional Law of India, 4th Edition at 703

[8] 93 L.Ed., 1131 (1150 and 1151) = (1948) 337 US 1 at 36

[9] AIR 1951 SC 118

[10] AIR 1952 SC 196

[11] 2005(8) SCC 534

[12] (2001) 2 SCC 386

[13] Romesh Thapar vs Madras – AIR 1950 S.C. 124; Express Newspapers Pvt Ltd vs Union – AIR 1958 S.C. 578; Sakal Newspapers Pvt Ltd vs Union – AIR 1973 S.C. 112; and Bennet Coleman and Co Ltd vs Union – AIR 1967 S.C. 106.

[14] 403 U.S. 15 (1971)

[15] 394 U.S. 576 (1969)

[16] 340 U.S. 315 (1951)

[17] 427 US 50 (1976)

[18] 106 S.Ct. 925 (1986)

[19] 440 US 1 (1979)

[20] 562 F.2d. 749 (1977) d.c.

[21] 413 US 376 (1973)

[22] 403 US 15 (1971)

[23] 397 US 728 (1970)

[24] 402 US 415 (1971)

[25] 285 US 105

[26] 352 US 380 (1957)

[27] AIR 1950 SC 124

[28] (1980) 1 SCC 43

[29] (1989) 2 SCC 574

[30] (2001) 1 SCC 582

[31] 1995(2) ALD 81